

### **REMARKS**

Claims 1-6, 35, 36, 38, and 39 are pending in the application. Claims 7-34 and 37 have been withdrawn.

### **Support for Claim Amendments**

Claims 1, 16, 29, and 35 were amended to more clearly define the invention. Support for this amendment is found in the Specification, for example on page 3, lines 1-6 and page 6, line 30-page 7, line 14. Accordingly, no new matter is added by this Amendment and entry thereof is respectfully requested.

### **Rejections under 35 U.S.C. § 103(a)**

1. Claims 1-4, 35, 36, and 38 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over two combinations of references: McGuire (5562669) in view of Dumican et al. (4987665), and McGuire in view of Li et al. (5715942). In view of the following arguments, Applicants respectfully traverse these rejections.

The examiner states on page 2 of the Advisory Action dated Jan. 13, 2003, that the McGuire reference discloses each and every element of the package or kit. According to the examiner on page 2 of the Office action dated Oct. 30, 2002, McGuire discloses each of the following elements: allografts used as replacement ligaments, sutures attached to both proximal and distal ends of the ligament, the use of semitendinosis and gracilis tendons, sutures attached prior to implantation to aid in insertion, grafts preserved for future ligament replacement procedures, grafts that can be a bundle of strands, and fixation devices used in "kits" for ligament repair. The examiner states that because the individual components of the applicant's claimed kit for ligaments are known in the art, it can be construed that any type of combination of these components available at the same time form a "kit". What is deficient in the McGuire reference, the examiner states, is that it does not disclose a package or kit with sutures attached to the graft

prior to sterilizing and packaging. As explained in the January 13, 2003 Advisory Action, the teaching that the examiner is relying upon in the secondary Dumican and Li references is that all elements of the devices are packaged together prior to sterilization. Both Dumican and Li disclose medical devices with sutures or suture materials pre-packaged and sterilized prior to use in surgery.

The present invention is a package for use in ligament replacement surgery wherein the graft material is non-autologous, pre-attached with sutures on both proximal and distal ends, and lacking bone plugs. Amended claims 1 and 35 recite these elements. This amendment is consistent with the Applicants' election of species IV, the graft material identified in Figures 8 and 9, in response to a restriction requirement mailed April 15, 2002 made by the examiner requiring election of a single species for examination from eight possible groups. Figures 8 and 9 are directed to replacement ligaments without bone plugs. Support for this amendment is found throughout the specification, for example, on page 3, lines 1-6 and page 6, line 30-page 7, line 14.

In view of the foregoing, Applicants submit that amended claims 1 and 35, and claims 2-4, 36, and 38 dependent therefrom, are not rendered obvious by McGuire in view of Dumican or in view of Li. McGuire does not disclose grafts that lack bone plugs. Neither Dumican nor Li cure this deficiency. In order to support a proper 103(a) rejection, the cited reference or combination of references must teach or suggest all limitations of the Applicants' claims.

2. Claims 5, 6, and 39 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over two combinations of references: McGuire (5562669) in view of Dumican et al. (4987665) and further in view of Schmieding (5415651), and McGuire in view of Li et al. (5715942) and further in view of Schmieding (5415651). The examiner's argument is that it would have been obvious to one of ordinary skill in the art to use the teachings of Schmieding for long sutures and various lengths of ligaments for the graft of McGuire as modified by either Dumican or Li in order to provide the proper length of ligament replacement necessary for the patient and to have

sufficient suture to secure it in place. In view of the foregoing arguments regarding claims 1-4, 35, 36, and 38, this rejection is respectfully traversed.

Applicants submit that claims 5, 6, and 39 are not rendered obvious by McGuire in view of Dumican and further in view of Schmieding, or in view of Li and further in view of Schmieding. McGuire as modified by either Dumican or Li does not disclose graft material for ligament replacement procedures wherein the material lacks bone plugs. Schmieding does not cure this deficiency. In order to support a proper 103(a) rejection, the cited reference or combination of references must teach or suggest all limitations of the Applicants' claims.

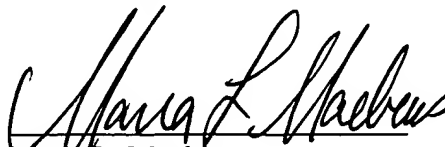
**Rejoinder of withdrawn claims**

Applicants respectfully submit that withdrawn claims 16 and 29, and claims 19-28, 30, 31, and 34 dependent therefrom, are method of making and method of using claims which include all the limitations of the elected product claims. Should a product claim be found to be in condition for allowance subsequent to the revival of this application and examination of the amended claims, Applicants request that the withdrawn process claims be rejoined and fully examined for patentability in accordance with 37 CFR 1.104.

**CONCLUSION**

In view of the foregoing remarks, Applicants believe that the application is in condition for allowance. However, if the Examiner disagrees, he is encouraged to call the undersigned at the number listed below in order to expedite the prosecution of this application.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Maria L. Maebius", written over a horizontal line.

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